THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION Nos.3734, 7325 and 7327 of 1995

Dated 21-02-2006

W.P.No.3734 of 1995

Between:

Ravi Shanker Kailas.

.. PETITIONER

AND

Additional Industrial Tribunal-cum-

Additional Labour Court, Hyderabad and another.

.. RESPONDENTS

W.P.No.7325 of 1995

Between:

Ravi Shanker Kailas.

.. PETITIONER

AND

Additional Industrial Tribunal-cum-

Additional Labour Court, Hyderabad and another.

.. RESPONDENTS

W.P.No.7327 of 1995

Between:

Ravi Shanker Kailas.

.. PETITIONER

AND

Additional Industrial Tribunal-cum-

Additional Labour Court, Hyderabad and another.

.. RESPONDENTS

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COMMON ORDER:

At the outset, both Sri G.Ramachandra Rao and Sri K.MahipathiRao, learned counsel appearing on behalf of the petitioners, would fairly concede that irrespective of the result of these writ petitions, the petitioner in W.P.No.3734 of 1995 will be paid a sum of Rs.18,000/-, the petitioners in W.P.Nos.7325/95 and 7327/95 will be paid a sum of Rs.15,000/- each as full and final settlement of their claims, inasmuch as the petitioners have closed their business with effect from February, 1996. Recording this concession, the writ petitions were heard on merits.

Since the question raised in all these writ petitions is common, it would suffice if the facts as stated in W.P.No.3734 of 1995 are taken note of.

The second respondent entered into an agreement on 01-01-1988, with the petitioner under which the petitioner had to provide trucks or lorries to the 2nd

respondent, who is a driver, to take the goods in those lorries or trucks to their required destination. The 2nd respondent was paid emoluments as per trip basis. Petitioners would contend that the second respondent was driving the vehicles of other establishments also on lumpsum contract basis. Several provisions of the agreement dated 01-01-1988 are referred to in this regard. It is also stated that though the contract expired after a period of two years, it was continued on the same terms and conditions till 22-05-1992.

The second respondent filed an application under Section 2A(2) of the Industrial Disputes Act (for short the Act) before the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad (hereinafter referred as "Tribunal") on 24-06-1992 wherein he claimed that he was employed as a driver with the petitioner and in other establishments, belonging to the family members of the petitioners herein. The petitioners filed their counters denying the allegations. On behalf of the 2nd respondent, two witnesses were examined as WW.1 and WW.2 and Exs.WW-1 to WW-7 were marked. On behalf of the petitioners, two witnesses were examined as MW.1 and MW.2 and Exs.M.1 to M.6 were marked. The Tribunal, holding that the second respondent was a workman of the petitioner and that his services were terminated contrary to the provisions of the Industrial Disputes Act, directed the petitioners to reinstate the second respondent into service with full back wages from 22-05-1992.

Both Sri G.Ramachandra Rao and Sri K.Mahipathi Rao, learned counsel for the petitioners, strenuously contend that the second respondent is not a workman within the meaning of Section 2-S of the Industrial Disputes Act, that there is no employer and employee relationship between the petitioner and the second respondent, that the second respondent is only a contractor as is clear from the terms and conditions of the contract and that only if the services of the second respondent had been

terminated by his employer, contrary to the provisions of Section 25-F of the Industrial Disputes Act, would the Tribunal have been justified in directing his reinstatement, with continuity of service and back wages. Learned counsel would refer to the evidence of the workman, wherein he stated that he was appointed by one Mr.Sreeramulu Kailas and that his services were terminated by Sreeramulu Kailas. Learned counsel would contend that Sreeramulu Kailas is not connected with the proprietary concerns of the petitioners herein and that merely because he is related to them cannot be a ground to mulct the petitioners with financial liability, more so, as subsequent to the filing of these writ petitions, the petitioners have closed their business with effect from February 1996. Learned counsel would further contend that even otherwise, inasmuch as the petitioner has not established that he had put in continuous service of 240 days within the period of 12 months prior to the date of termination, the question of violation of Section 25-F of the Industrial Disputes Act does not arise. Learned counsel would also contend that the second respondent was not even clear regarding the establishment in which he was working. This submission of both the learned counsel has substantial force inasmuch as the evidence of the workmen would itself show that they were not clear as to the establishment in which they were working.

A perusal of the award passed by the Tribunal would go to show that the Tribunal disbelieved the contention that there was a contract between the petitioner and the second respondent and that in any event, subsequent to 31-12-1990, no contract was in existence. The Tribunal referred to several judgments to come to the conclusion that the second respondent was an employee of the petitioner herein. Since these are all findings of fact, it is not for this court to sit in appeal or re-appreciate the evidence on record.

Even if the Tribunal was justified in its conclusion that there was an employer and employee relationship between the petitioner and the second respondent, the further question which was required to be examined was as to whether the second respondent had put in a continuous period of service of 240 days within the period of 12 calendar months prior to the date of his termination. It is settled law, as laid down in catena of judgments of the Apex Court, that the burden to prove that he was engaged continuously for a period of 240 days, within the twelve months period prior to his termination, lies heavily on the workman and in the absence of any evidence being adduced, much less documentary evidence, on the part of the workman that he had put in 240 days service during the 12 months period prior to the date of his termination, it cannot be said that the mandatory provisions under Section 25-F of the Act have been violated.

The award of the Tribunal, in I.D.No.181 of 1992, dated 13-09-1994, directing the petitioner to reinstate the second respondent into service with full back wages from 22-05-1992 is, therefore, set aside and the writ petitions are accordingly allowed.

Both Sri G.Ramachandra Rao and Sri K.Mahipathi Rao, learned counsel for the petitioners, would submit that the petitioners would deposit the amounts undertaken to be paid by them before the Tribunal within a period of two months from today.

Needless to state that the result of the writ petitions would not come in the way of the second respondent claiming the amount which the petitioner herein has undertaken to pay irrespective of the result of the writ petitions.

Subject to the concession made by both the counsel, the writ petitions are allowed. No order as to costs.

21-02-2006

Prv